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AN INTRODUCTION TO FEDERAL GUIDELINE SENTENCING

The advent of guideline sentencing has completely transformed federal criminal practice. In many ways, the sentencing guidelines are a minefield for the defense, inflicting casualties on attorneys and clients alike, and increasing exponentially the effort required to provide even minimally effective representation. The guidelines have altered the roles of the various participants in the system, and they have changed some routine steps—such as the pretrial services interview and the presentence interview—into crucial stages. Now more than ever, defense attorneys must become fully involved in a case at the earliest possible time. In all defense efforts—from seeking release, to investigation, to discovery, to plea negotiations, to conduct of the trial itself—counsel must not only weigh traditional considerations, but also take into account the dangers and possibilities of the sentencing guidelines. The starting point is a thorough understanding of the fundamental changes in the sentencing process.

Under old law, the court enjoyed broad discretion to sentence within the statutory limit, and while most sentences were parolable, they were largely insulated from appellate review. Under new law, the court's discretion to fix sentence is cabined within a guideline range that may be a small fraction of the statutory limit. While that sentence is nonparolable, it is subject to a limited right of review on appeal—not only for illegality, but also for incorrect application of the guidelines, departure from the guideline range, and the reasonableness of a sentence for which no guideline exists. Application of the guidelines to a case produces two numerical values, an offense level and a criminal history category. Those two values yield a guideline range in the sentencing table, a range expressed in months, whose maximum may not exceed its minimum by more than the greater of 25 percent or six months. That applicable guideline range fixes the limits of the sentence, unless the court determines that a factor not adequately considered by the Sentencing Commission warrants imposition of a sentence outside the guideline range. Within the guidelines, a sentence of straight probation may be imposed only if the bottom of the applicable range is zero. (See sentencing table appended to this paper.)

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To introduce the attorney to guideline sentencing, this paper first examines basic statutory changes in the law of sentencing, and then reviews the structure of the guidelines themselves. It describes the mechanics of applying the guidelines to a typical case, discusses plea bargaining, and offers caveats against some traps for the unwary. Finally, it sets out a bibliography of source materials for further study. This treatment is not exhaustive; it provides an orientation which will facilitate gaining a working knowledge of guideline sentencing.

Basic Statutory Changes

The Sentencing Reform Act ("Act"), a part of the Comprehensive Crime Control Act of 1984, took effect November 1, 1987. It applies to offenses (including continuing offenses) committed on or after that date. The Act created the United States Sentencing Commission as an independent body within the judicial branch, and gave it authority to promulgate sentencing guidelines and policy statements, consistent with the governing statutes. This enabling legislation, codified in the judicial code at 28 U.S.C. §§ 991-998, includes a number of congressional directives as to the content of the guidelines. It states the purposes of the Commission, including the parallel goals of providing "certainty and fairness" in meeting specified purposes of sentencing, while avoiding "unwarranted sentencing

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disparities." § 991(b)(1)(B). The principal provisions which directly govern sentencing are codified in the criminal code, 18 U.S.C. chs. 227 (Sentences), 229 (Postsentence Administration), 232A (Special Forfeiture of Collateral Profits of Crime), and 235 (Appeal).

Imposition of Sentence; Departure. Counsel must have a detailed understanding of 18 U.S.C. § 3553, Imposition of a sentence. This section sets out what the court must consider, including the prescribed purposes of sentencing; the method of applying the guidelines; the standard for departures from the indicated range; the requirement to state reasons for imposing a sentence; and the authority—conditioned solely upon the Government's motion reflecting a defendant's cooperation—to impose a sentence below a statutory minimum. It distinguishes guidelines from policy statements: while the court is required to "consider" both guidelines and policy statements, § 3553(a)(4)-(5), it "shall impose a sentence of the kind, and within the range" specified in the applicable guideline, absent a valid departure. § 3553(b). A departure is permissible only when "the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission . . . that should result in a sentence different from that described." *Id.*

Abolition of Parole. Under the Act, parole is abolished. The U.S. Parole Commission is continued in existence for a limited time to administer old-law cases. Absent a sentence modification under 18 U.S.C. § 3582(c) (see also U.S.S.G. §1B1.10, p.s.), a prisoner will serve the sentence imposed by the court, less any applicable credit for satisfactory behavior.

Restriction of Good-Time Credit. The credit for satisfactory behavior was sharply reduced under the Act, in 18 U.S.C. § 3624(b). While old law permitted good time on sentences of six months or more, new law allows the credit only on sentences in excess of one year, other than life. While the old credit increased with the length of the sentence, the new credit is fixed at a maximum of 54 days per year, to be determined at the end of each year served, and applied to the remainder of the sentence.

Supervised Release. While a sentence under the Act is without parole, a sentence to imprisonment for a felony or a misdemeanor (other than a petty offense) may be followed by a term of supervised release, and it must include such a term if required by statute. 18 U.S.C. § 3583(a). (The pertinent guideline additionally requires imposition of supervised release to follow any sentence of imprisonment of more than one year. U.S.S.G. §5D1.1(a).) Except as otherwise provided (as in certain title 21 drug offenses), the authorized maximum terms increase with the grade of the offense from one year, to three years, to five years. For violation of a condition of supervised release, the court may revoke the term, and require the person to serve all or part of it in prison. § 3583(e)(3). For Class B, C, and D felonies, the maximum term to be served upon revocation is less than the maximum term of supervised release. *Id.*

Restriction of Probation. Under the Act, probation is a sentence, not a suspension of sentence. Apart from the restrictions on straight probation dictated by the guidelines, the defining statute precludes a sentence of probation under three circumstances: (1) the defendant is an individual found guilty of a Class A or Class B felony (offenses carrying maximum terms of twenty-five years or more, life, or death); (2) probation has been expressly precluded for the offense; or (3) "the defendant is sentenced at the same time to a term of imprisonment for the same or a different offense." 18 U.S.C. § 3561(a). (From November 1, 1987 until November 18, 1988, an offense punishable by maximum imprisonment of *twenty* years or more was classified as a Class B felony. Pub. L. 100-690, § 7041, 102 Stat. 4181, 4399 (Nov. 18, 1988).)

Fines. To determine the maximum fine for an offense, it is not sufficient to consult the statute defining the offense. Counsel must cross-check

the provisions of 18 U.S.C. § 3571, Sentence of fine. The maximum fine for an individual will generally be no less than $250,000 for a felony, $100,000 for a Class A misdemeanor not resulting in death, or $5,000 for any lesser offense. It will be higher if the amount specified in the law setting forth the offense is higher, as it is in certain drug offenses in title 21. Interest accrues on any fine of more than $2,500 that is not paid in full before the fifteenth day after judgment, and additional penalties apply to a delinquent or defaulted fine. § 3612(f)-(g). A defendant who knowingly fails to pay a delinquent fine is subject to resentencing, § 3614, and a defendant who willfully fails to pay a fine may be prosecuted for criminal default, § 3615.

Review of a Sentence. A major innovation of the Act is a limited right of review of a sentence on appeal, 18 U.S.C. § 3742. Either the defendant or the Government may appeal on the grounds that the sentence was (1) "imposed in violation of law"; (2) "imposed as a result of an incorrect application of the sentencing guidelines"; or (3) "imposed for an offense for which there is no sentencing guideline and is plainly unreasonable." § 3742(a)-(b). Additionally, the defendant may appeal a sentence that is above the guideline range, and the Government may appeal a sentence that is below the guideline range. § 3742(a)(3), (b)(3). Neither side, however, may appeal a no-guideline sentence, or one resulting from a departure, if the sentence is within a specific sentence agreement under Federal Rule of Criminal Procedure 11(e)(1)(C). § 3742(c). If the government appeals to the court of appeals, it must obtain personal approval to further prosecute the appeal from the Attorney General, the Solicitor General, or a deputy solicitor general designated by the Solicitor General. § 3742(b), (g), as amended by Pub. L. 101-647, §§ 3501, 3503, 104 Stat. 4789, 4921 (Nov. 29, 1990). Under Federal Rule of Appellate Procedure 4(b), Appeals in Criminal Cases, either the defendant or the Government may file notice of appeal within the specified period after entry of judgment, or notice of appeal by the opposing party. Thus, the filing of a notice of appeal by one party will restart the time for filing notice of appeal by the opposing party.

Correction of Sentence. By the Act's amendment of Federal Rule of Criminal Procedure 35, in a covered case the court no longer has jurisdiction to reduce a sentence on its own motion or motion of the defendant. Instead, the court, on *motion of the Government*, may within *one year* after imposition of sentence, reduce a sentence to reflect a defendant's *subsequent*, substantial assistance in the investigation or prosecution of *another person* who has committed an offense. FED. R. CRIM. P. 35(b). Also under the Act, the court no longer may correct an illegal sentence at any time, but instead shall correct a sentence upon remand following an appeal under § 3742. FED. R. CRIM. P. 35(a). Both the old Rule 35(b) (defendant's motion within 120 days) and the new Rule 35(b) (Government's motion within one year), as well as 18 U.S.C. § 3553(e) (limited authority to impose a sentence below a statutory minimum), all apply to offenses committed before the taking effect of the guidelines. Pub. L. 100-182, § 24, 101 Stat. 1266, 1277 (Dec. 7, 1987).

The Guidelines Manual

The *Guidelines Manual* comprises seven chapters and three appendices, including a statutory index. To undertake the defense of a guidelines case, counsel must have a thorough understanding of Chapters One, Three, Four, Five, and Six, as well as all sections of Chapter Two, Offense Conduct, which may arguably apply to the case. In a revocation of probation or supervised release, counsel must also master the policy statements in Chapter Seven.

Chapter One: Introduction and General Application Principles. In Part 1A, an introduction, the Commission sets out its authority and statutory mission, defines its basic approach, and explains its resolution of major issues. This latter policy statement is important to an understanding of relevant conduct, departures, and the decision to move toward a charge offense system

with a "significant number of real offense elements." U.S.S.G. §1A4(a), p.s. In Part 1B, the Commission provides general application principles: definitions of terms, the rules for determining the applicable guideline, the significance of commentary, and the all-important rules for determining relevant conduct. In guideline §1B1.9, the Commission has excepted petty offenses from the coverage of the guidelines.

Chapter Two: Offense Conduct. The offense conduct guidelines are divided by type of offense into nineteen parts in this chapter, which constitutes nearly 60 percent of the *Guidelines Manual* excluding appendices. A single guideline may cover one statutory offense, or many. Each guideline has a base offense level, and it may have one or more specific offense characteristics which adjust the base level up or down. Part 2X, Other Offenses, provides the guidelines for conspiracies, attempts, and solicitations; aiding and abetting; accessory after the fact; misprision of a felony; and offenses for which no guideline has expressly been promulgated.

Chapter Three: Adjustments. This chapter sets out offense level adjustments of general application. A defendant may incur an adjustment for vulnerable victim, official victim, or restraint of victim. A defendant in any offense committed by more than one participant may receive an upward adjustment for aggravating role, a downward adjustment for mitigating role, or no adjustment. A defendant who abuses a position of trust or uses a special skill may receive an upward adjustment. A defendant who willfully obstructs the administration of justice, as by destroying or concealing material evidence, or "providing materially false information to a probation officer in respect to a presentence or other investigation for the court," is subject to upward adjustment, U.S.S.G. §3C1.1, comment. (n.3(d), (h)), as is a defendant who causes reckless endangerment during flight, U.S.S.G. §3C1.2 (Nov. 1, 1990).

Multiple counts. Under Part 3D, a defendant who is convicted of multiple counts, or who stipulates to multiple offenses, may be subject to upward adjustment. Such an adjustment will not apply, however, if the guideline calls for multiple counts that involve substantially the same harm to be grouped together. These guidelines on multiple counts, along with the guideline on relevant conduct, must be carefully considered by counsel in evaluating an offer to dismiss counts in exchange for a plea of guilty.

Acceptance of responsibility. Under Part 3E, a defendant may be accorded a two level downward adjustment for acceptance of responsibility for his criminal conduct. A defendant who pleads guilty thereby provides some evidence of acceptance of responsibility, but does not gain the adjustment as a matter of right. Under the commentary to this guideline, a defendant who received an adjustment for obstruction is not ordinarily entitled to an adjustment for acceptance of responsibility.

Chapter Four: Criminal History and Criminal Livelihood. The defendant's criminal history, including any applicable adjustment for career offender or criminal livelihood, forms the second axis of the sentencing table. A criminal record is translated into a criminal history category by guidelines which assign points for prior convictions based primarily upon length of the sentence. Certain criminal convictions or juvenile adjudications may be noncountable because of their minor nature or their remoteness in time, or for other reasons, such as constitutional invalidity. There is a recency factor: committing the instant offense within two years after release from imprisonment for certain prior convictions, or while under any form of criminal justice sentence, increases the criminal history points.

Criminal history departure. An important policy statement provides that where "the criminal history category does not adequately reflect the seriousness of the defendant's past criminal conduct or the likelihood that the defendant will commit other crimes," the court may consider a departure. U.S.S.G. §4A1.3, p.s. Consideration

of this policy statement may lead to either an upward or a downward departure.

Career offender. Guideline §4B1.1, Career Offender, implements the congressional mandate to assure that certain repeat offenders receive a sentence of imprisonment at or near the maximum authorized. See 28 U.S.C. § 994(h). This guideline, which applies to an adult defendant convicted of a third offense that is either a crime of violence or a controlled substance offense, produces a guideline range which approximates the statutory maximum for the offense of conviction. This chapter's definitions and instructions for computing criminal history apply to the counting of convictions under the career offender guideline; therefore, questions of remoteness, invalidity, or whether prior convictions were "related cases" may be of utmost importance.

Criminal livelihood. Guideline §4B1.3, Criminal Livelihood, provides a minimum offense level of 13, or 11 if acceptance of responsibility applies, "[i]f the defendant committed an offense as part of a pattern of criminal conduct engaged in as a livelihood."

Armed career criminal. Guideline §4B1.4, Armed Career Criminal (Nov. 1, 1990), applicable to a person convicted of a firearm or ammunition offense who has three prior convictions for a violent felony or a serious drug offense, frequently produces a guideline range above the mandatory minimum term of fifteen years.

Chapter Five: Determining the Sentence. This chapter includes the sentencing table (which also appears on the inside back cover of the *Guidelines Manual*), and it provides detailed guidelines for imposing a sentence of probation, imprisonment, or fine, in single and multiple count convictions; for imposing a term of supervised release; and for implementing alternatives to incarceration, including the new limited form of "split" sentence under guideline §5C1.1(c)–(e). Part 5H sets out policy statements on the Commission's treatment of certain offender characteristics, including age, education and vocational skills, previous employment record, family ties and responsibilities, and community ties. The policy of the Commission is that all of the characteristics just mentioned are "not ordinarily relevant" in determining the propriety of a departure. U.S.S.G. §5H1.1–.2, .5–.6, p.s. The operative word for the advocate is "ordinarily," and even in the ordinary case those characteristics may be relevant to sentencing decisions other than departure.

Departures. Part 5K provides policy statements on the subject of departures. Policy statement §5K1.1 authorizes an open-ended downward departure if the defendant "has provided substantial assistance in the investigation or prosecution of another person who has committed an offense." (See discussion of cooperation under "Plea Bargaining" below.) Policy statement §5K2.0, Grounds for Departure, provides general principles which are important in analyzing the propriety of any departure. Part 5K2 goes on to discuss a number of factors which may warrant departure, but which are not susceptible of comprehensive advance analysis by the Commission. While most of these factors would tend to produce an upward departure, four of them can produce a downward departure in a proper case: (1) victim's wrongful provocation, (2) commission of a crime in order to avoid a perceived greater harm, (3) coercion and duress, and (4) diminished capacity in committing a non-violent offense. Moreover, as the Commission points out, "[a]ny case may involve factors in addition to those identified that have not been given adequate consideration by the Commission." U.S.S.G. §5K2.0, p.s. And as the Commission further acknowledges, it "has not dealt with the single acts of aberrant behavior" that may justify probation through departure. U.S.S.G. §1A4(d), p.s.

Chapter Six: Sentencing Procedures and Plea Agreements. This chapter sets forth procedures for establishing the sentence-determinative facts. It provides policy statements on the preparation and disclosure of the presentence report, resolution of disputed issues, and

procedures respecting plea agreements and stipulations. In policy statement §6B1.2, it declares the Commission's standards for acceptance of plea agreements, which depend upon the type of agreement under Federal Rule of Criminal Procedure 11(e)(1). While the parties may enter into a stipulation of facts relevant to sentencing, "[t]he court is not bound by the stipulation, but may with the aid of the presentence report, determine the facts relevant to sentencing." U.S.S.G. §6B1.4(d), p.s.

On the question of whether the sentencing judge must, prior to imposition of sentence, notify the defendant of an intention to depart from the applicable guideline range and provide him an opportunity to comment, see *United States v. Burns*, 893 F.2d 1343 (D.C. Cir.), *cert. granted*, 110 S.Ct. 3270 (1990).

Chapter Seven: Violations of Probation and Supervised Release. The Commission promulgated new policy statements, effective November 1, 1990, applicable to the revocation of probation and supervised release. These policy statements classify violations; guide probation officers in reporting violations to the court; and propose disposition by reference to the grade of violation, and to a revocation table similar in format to the sentencing table.

Appendices. The official *Guidelines Manual* has three appendices. Appendix A is a statutory index which specifies the offense conduct guideline or guidelines ordinarily applicable to the offense of conviction. Appendix B sets forth selected sentencing statutes. Appendix C documents all amendments to the guidelines, policy statements, and official commentary since their initial promulgation.

Application of the Guidelines

The sentencing worksheets prepared by the Commission, reproduced as an appendix to this paper, are helpful in calculating a guideline sentence. The steps, prescribed by guideline §1B1.1 and set out in the worksheet, are:

- Do a separate Worksheet A (Offense Level) for each count of conviction or stipulated offense. Determine the applicable guideline by reference to guideline §1B1.2 and Appendix A-Statutory Index, including the introduction to the index. Do not overlook the effect of a stipulation to a more serious offense in a plea of guilty or nolo contendere, §1B1.2(a).

- From the offense conduct guideline in Chapter Two, and by reference to guideline §1B1.-3(a), Relevant Conduct, determine the base offense level and any applicable specific offense characteristics. The relevant conduct guideline will frequently require inclusion of the conduct from dismissed counts, and even uncharged offenses in this calculation. U.S.S.G. §1B1.3, comment. (backg'd). Take note that in drug cases, the drug quantity table is generally based upon "the entire weight of any mixture or substance containing a detectable amount of the controlled substance." U.S.S.G. §2D1.1 note. On the question of whether the carrier medium for LSD is included in that "mixture or substance," see *United States v. Marshall*, 908 F.2d 1312 (7th Cir.) (en banc), *cert. granted sub nom. Chapman v. United States*, 111 S.Ct. 579 (1990). While purity is not a factor in determining the offense level (except as specified), "unusually high purity may warrant an upward departure." U.S.S.G. §2D1.1, comment. (n.9).

- Make all applicable adjustments from Chapter Three, Parts A, B, and C: victim related adjustments, role in the offense, and obstruction. Note again that unless otherwise specified, these adjustments are to be based upon all relevant conduct as defined in guideline §1B1.3(a).

- If there are multiple counts, either by conviction or by operation of guideline §1B1.2(c) and application note 4, repeat the first three steps on a separate Worksheet A for each count; then use Worksheet B to apply Chapter Three, Part D (Multiple Counts), to group the counts and adjust the offense level if indicated. Because guideline §1B1.3, Relevant Conduct, frequently includes the harm from dismissed counts in the

offense level, this multiple count adjustment may be most important in evaluating the benefit of a plea offer to dismiss counts.

• Apply the anticipated adjustment, if any, for acceptance of responsibility under Chapter Three, Part E. Note that an obstruction adjustment under guideline §3C1.1 will ordinarily preclude an adjustment for acceptance of responsibility. U.S.S.G. §3E1.1, comment. (n.4).

• By reference to Chapter Four, Part A, determine the Criminal History Category on Worksheet C. Take care to examine any issues of remoteness, exclusion, or invalidity of prior convictions. Review the overall criminal history—not just countable items—in light of policy statement §4A1.3, Adequacy of Criminal History Category, for possible grounds for departure.

• Proceeding to Worksheet D, check carefully *in every case* to see whether the career offender guideline, §4B1.1, or the criminal livelihood guideline, §4B1.3, apply. Remember that these guidelines can dramatically increase the applicable range for an otherwise less serious offense, especially where the career offender guideline places the sentence range for a small-amount drug conviction at or near a statutory maximum of 20 years. In an armed career criminal case, do not overlook guideline §4B1.4 (Nov. 1, 1990), which does not appear in the June 1989 revision of Worksheet D appended to this paper.

• Using the total offense level and the criminal history category, determine the applicable guideline range from the sentencing table, Chapter Five, Part A. From this applicable range, determine from Chapter Five, Parts B through G, the sentencing requirements and options.

• Consider any possible grounds for departure, upward or downward. In this, take note of any specific suggestions for departure contained in commentary to the offense conduct guidelines in Chapter Two. Study also the Commission's policy statements in the introduction, U.S.S.G. §1A4(b), p.s.; in Chapter Five, Part H (Specific Offender Characteristics); and in Chapter Five, Part K (Departures). Keep in mind, however, that grounds for departure are not limited to those discussed by the Commission. A major part of sentencing advocacy on behalf of the defendant is resisting an upward departure and seeking a downward departure.

Consonant with policy statement §6A1.2, most courts have adopted local procedures governing disclosure of the presentence report, objections to the report, resolution of disputes in advance of sentencing, and identification for the court of unresolved issues. Counsel must stay abreast of any local court rule on this subject, in addition to Federal Rule of Criminal Procedure 32, Sentence and Judgment. At the sentencing hearing, counsel must scrupulously observe traditional rules governing preservation of error for possible review of the sentence on appeal.

Plea Bargaining

In many typical cases, the defendant will not improve his guideline range by pleading guilty. Defense counsel must carefully analyze the case to determine whether the supposed benefit of a plea disposition is real or illusory. That analysis must include the effect of the guidelines governing relevant conduct, multiple counts, and acceptance of responsibility. It must also consider Department of Justice policy on plea agreements, and the Commission's policy statement on acceptance of those agreements. Because cooperation by the defendant is a common element of a plea bargain, counsel must have a thorough understanding of the pertinent statutes and *Guidelines Manual* provisions.

Relevant Conduct. The common plea agreement calling for dismissal of counts will not reduce the guideline range if the subject matter of the dismissed counts is "relevant conduct" for purposes of determining the range. For example, where guideline §3D1.2(d) would require grouping of multiple counts in drug, fraud, and theft offenses, the relevant conduct includes "all such acts and omissions that were part of the same

course of conduct or common scheme or plan as the offense of conviction." U.S.S.G. §1B1.3-(a)(2). Counts dismissed from drug or embezzlement indictments will usually meet this test. Under the guideline, therefore, one charged with multiple counts of distribution of controlled substances who pleads guilty to only one count should expect that the base offense level will be determined from no less than the total amount of drugs alleged. Under certain circumstances, the weight of a controlled substance "under negotiation" is the applicable amount. U.S.S.G. §2D-1.4, comment. (n.1). The conduct need not be included in formal charges; uncharged conduct may also be relevant conduct for purposes of this guideline. U.S.S.G. §1B1.3, comment. (backg'd). Where any criminal activity was arguably "undertaken in concert with others," see *id.*, comment. (n.1).

Multiple Counts. As mentioned above, guideline §3D1.2 requires grouping of counts in many common prosecutions where counts involve substantially the same harm. In such cases, there will be no upward adjustment for conviction of multiple counts in any event, nor will a one-count plea avoid counting the conduct in the dismissed counts. However, in the case of offenses which the guidelines do not group—such as robberies—dismissal of counts will avoid a multiple count adjustment, provided the defendant does not stipulate to the elements of those offenses in connection with a plea of guilty or nolo contendere. See U.S.S.G. §1B1.2(c). Whenever multiple counts are in play, counsel must perform the multiple count calculation to determine whether avoiding conviction on some counts affects the guideline range. Even in a single count prosecution, the defense must take care not to inadvertently invoke a multiple count adjustment by operation of guideline §1B1.2(c).

Charge Bargains. Policy statement §6B1.2 recognizes all three forms of plea agreement sanctioned by the criminal rules: charge bargain, recommendation, and specific agreed sentence. For a number of reasons, the charge bargain under Federal Rule of Criminal Procedure 11(e)-(1)(A) has assumed prime importance. Because statutes "trump" guidelines, a given count may cap the maximum sentence below the probable guideline range for the case. This is not a departure; by operation of guideline §5G1.1(a), where the statutory maximum sentence is less than the minimum of the applicable guideline range, the statutory maximum becomes the guideline sentence. Even where the guideline range is within all statutory maximums, a count with a lower maximum will limit the extent of a possible upward departure. Where counts are governed by different offense conduct guidelines in Chapter Two, a plea to a count which produces a lower offense level may be advantageous. And where conviction on multiple counts would bring an upward adjustment under Part 3D, a charge bargain which avoids conviction on the counts causing the adjustment can be beneficial. Even where a specific sentence agreement under Rule 11(e)(1)(C) can produce the same favorable result, in practice a charge bargain may be more readily obtainable from the prosecutor and more likely acceptable to the court. In the remaining form of agreement, a defendant relying upon a sentence recommendation under Rule 11(e)(1)(B) must understand that if the court rejects it, he has no right to withdraw his plea. FED. R. CRIM. P. 11(e)(2).

Acceptance of Responsibility. In cases where avoidance of prosecution on some charges does not affect the guideline range or provide a beneficial cap, the only perceived benefit for a plea of guilty may be the adjustment for acceptance of responsibility. While demanding trial does not automatically preclude the adjustment, it usually renders it a remote possibility. While pleading guilty does not assure the adjustment, it provides some basis for it. The court's determination of the defendant's acceptance of responsibility "is entitled to great deference on review." U.S.S.G. §3E1.1, comment. (n.5). While at this writing the courts are divided on the question of whether acceptance of responsibility must embrace all related conduct or only the offense of conviction, the Commission has stated that the adjustment is appropriate for one

who accepts responsibility "for the offense and related conduct." *Id.*, comment. (backg'd) (Nov. 1, 1990). What is important is to not give up a valuable right to contest the charges solely in pursuit of an adjustment for acceptance of responsibility that has already been lost. Scrutinize all pertinent facts which may bear upon this determination, with special attention to the possibility of an adjustment for obstruction. See U.S.S.G. §3E1.1, comment. (n.4). Where it is certain that a defendant will not receive the adjustment for acceptance of responsibility even upon a plea of guilty, and the plea confers no other benefit, then the plea will not improve the guideline range. Despite this admonition, do not underestimate the value of the two-level adjustment for acceptance of responsibility, or the possibility of improving the placement of the sentence within the guideline range.

Prosecutorial Policy. Under the stated policy of the Department of Justice, prosecutors are to proceed on the most serious "readily provable" charges, and they are not to abandon charges in order to arrive at a plea agreement "that fails to reflect the seriousness of the defendant's conduct." Attorney General Memorandum Entitled "Plea Bargaining Under the Sentencing Reform Act" 2 (Mar. 13, 1989). The Department expects plea bargains to support, not undermine, the guidelines. In view of prosecutors' natural reluctance to abandon filed charges, preaccusation negotiations can sometimes be beneficial. Defense counsel should focus on the term "readily provable," as the prosecutor need not pursue charges which the Government would not expect to win at trial. This test is largely subjective, and it comports with the Commission's decision "not to make major changes in plea agreement practices in the initial guidelines." U.S.S.G. §1A4(c), p.s.; see also U.S.S.G. Ch.6, Pt.B, intro. comment. Even readily provable charges may be abandoned under two circumstances: if the guideline range would be unaffected; and, with specific supervisory approval, in the proper management of limited prosecutorial resources. Attorney General Memorandum at 3-4. While the first circumstance is of no benefit to the defendant, the second is a proper point to make in support of a negotiated disposition.

Commission Policy. In policy statement §6B1.2, Standards for Acceptance of Plea Agreements, the Commission divided into two groups the three forms of plea agreement recognized by Federal Rule of Criminal Procedure 11(e)(1). A charge agreement under Rule 11(e)-(1)(A) may be accepted if "the remaining charges adequately reflect the seriousness of the actual offense behavior" and acceptance of the agreement "will not undermine the statutory purposes of sentencing." U.S.S.G. §6B1.2(a), p.s. A recommendation under Rule 11(e)(1)(B), or a specific agreed sentence under Rule 11(e)(1)(C) may be accepted if the recommended or agreed sentence is within the applicable guideline range, or departs from that range for "justifiable reasons." U.S.S.G. §6B1.2(b)-(c), p.s. See also the Commission's explanation of its resolution of the plea bargaining issue, U.S.S.G. §1A4(c), p.s.

Cooperation. Congress directed the Commission to assure that the guidelines reflect the general appropriateness of imposing a lower sentence to reflect "a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense." 28 U.S.C. § 994(n). Implementing that direction in policy statement §5K1.1, the Commission has required a predicate motion by the Government for a downward departure for substantial assistance. While this provision is a policy statement, not a guideline, some courts have held that the Government's motion is a condition precedent to the departure. (The extraordinary relief of a sentence below a mandatory minimum established by statute specifically requires a motion of the Government. 18 U.S.C. § 3553(e).) In an appropriate case, defense counsel might seek favorable consideration for cooperation—within statutory limits—notwithstanding the Government's unwillingness to go forward with a motion; or might seek to compel the Government's motion in fulfillment of a plea agreement. Even absent a Government motion for downward departure, the court could consider

cooperation as a mitigating factor in fixing sentence within the guideline range.

Note that the assistance must relate to the investigation or prosecution of another person, not the defendant. Note also that while "[s]ubstantial weight should be given to the government's evaluation of the extent of the defendant's assistance," the significance and usefulness of the defendant's assistance is ultimately a decision for the court. U.S.S.G. §5K1.1(a)(1), p.s. & comment. (n.3). "A defendant's refusal to assist authorities in the investigation of other persons may not be considered as an aggravating sentencing factor." U.S.S.G. §5K1.2, p.s.

A defendant contemplating cooperation must first seek the protection of guideline §1B1.8, Use of Certain Information. This permits the parties to agree that self-incriminating information provided by a defendant in connection with a cooperation agreement shall not be used to determine the applicable guideline range, except as provided in the agreement. This provision has specified exceptions: information previously known to the Government, criminal history, perjury or false statement, and defendant's breach of the cooperation agreement. While the guideline runs only to determining the applicable range, the commentary permits the parties to agree also that cooperation information will not be used to increase the sentence within the applicable range. U.S.S.G. §1B1.8, comment. (n.1). This should be the subject of a separate, express clause of the cooperation agreement.

Some Traps for the Unwary

Pretrial Services Interview. In most courts, a pretrial services officer (or probation officer designated to perform pretrial services) will seek to interview arrested persons prior to their initial appearance, to gather information pertinent to the release decision. Absent specified exceptions, information obtained during pretrial services functions "is not admissible on the issue of guilt in a criminal judicial proceeding." 18 U.S.C. § 3153(c)(3). That information will, however, be made available to the attorney for the Government, as well as the attorney for the accused, § 3153(c)(1), and it will be provided to the probation officer for the purpose of preparing the presentence report, § 3153(c)(2)(C). Certain information pertinent to the release decision—including criminal history (especially juvenile adjudications and tribal court convictions that would otherwise be unavailable), earnings history, and use of a special skill—often raises the guideline range for imprisonment and fine, or provides a basis for upward departure. It is imperative, therefore, for counsel to advise the defendant of these considerations prior to the interview, with due regard for the absolute necessity that any information provided be truthful. As a corollary, counsel who enters a case after that phase must learn what information was acquired during the pretrial services function, to be aware of its effect on sentence.

The Judicial Conference of the United States has recognized the critical nature of this phase by encouraging courts to take necessary steps to furnish appointed counsel to eligible defendants prior to the pretrial services interview. *Report of the Proceedings of the Judicial Conference of the United States* 18–19 (Mar. 15, 1988).

Stipulation to More Serious Offense. As a general rule, the court will use the offense guideline section in Chapter Two, Offense Conduct, most applicable to the offense of conviction. Under a crucial exception, however, in the case of a plea of guilty or nolo contendere "containing a stipulation that specifically establishes a more serious offense," the court is to use the guideline applicable to the more serious stipulated offense. U.S.S.G. §1B1.2(a) & comment. (n.1). While this can be a useful element for express plea bargaining, no defendant should run afoul of it inadvertently by agreeing to an overbroad factual basis during a guilty plea. See *United States v. Braxton*, 903 F.2d 292 (4th Cir.), *cert. granted*, 111 S.Ct. 426 (1990). At the same time, a defendant who limits his admissions during a plea proceeding may risk his adjustment for acceptance of responsibility.

Presentence Interview and Report. In most cases, a probation officer will make a presentence investigation and report to the court prior to imposition of sentence. 18 U.S.C. § 3552(a); FED. R. CRIM. P. 32(c). A defendant's unrestricted interview with the probation officer often produces information which increases a guideline sentence. In addition to the problem areas noted in connection with the pretrial services interview, the broader presentence interview has even greater potential to aggravate a sentence in specific, foreseeable ways. Disclosing theretofore undetected relevant conduct may, by operation of guideline §1B1.3, increase the offense level. Information first revealed during the presentence interview may affect Chapter Three adjustments, and criminal history not of record may increase that category in the sentencing table. Other information not readily discoverable, such as foreign sentences, tribal court sentences, and expunged convictions, as well as drug use and criminal associations, may increase the sentence. Refusal to submit to an unrestricted presentence interview may, of course, jeopardize the adjustment for acceptance of responsibility or adversely affect other incidents of sentence, including the placement of the sentence within the guideline range. There is no fixed solution to this dilemma; counsel must make an informed decision as to the best course of action in the context of a particular case. Because the presentence interview holds many perils, the defendant must fully understand its function, and defense counsel should be present throughout.

Under the Act, the role of the probation officer is profoundly altered. Both the sentencing judge and the reviewing court may accord considerable deference to the officer's factual findings, application decisions, and sentence recommendations. While guideline sentencing has many objective elements, it is also replete with factors susceptible of subjective resolution. Defense counsel should not assume that the probation officer has arrived at a favorable recommendation, or even a correct one. The effective and zealous advocate must independently review all elements of the report, and indeed all aspects of the case, in order to make any necessary objections and affirmatively present the defense case for a favorable sentence.

Amendments and Ex Post Facto. The guidelines are subject to periodic review and revision. 28 U.S.C. § 994(o). Consistent with § 994(p), the Commission normally submits guideline amendments to Congress on or shortly before May 1 of each year, to take effect November 1, absent congressional modification or disapproval. Counsel should become familiar with each round of proposed amendments, especially those labeled as "clarifying," as soon as they are published in the Federal Register.

Title 18 U.S.C. § 3553(a)(4) requires the court to apply the guideline that is in effect on the date the defendant is sentenced. Thus, the statute gives the defendant the benefit of a favorable guideline amendment intervening between commission of the offense and date of sentencing. In the case of an intervening substantive amendment which is harmful to the defendant, the Ex Post Facto Clause would preclude application of that amended guideline. *See Miller v. Florida*, 482 U.S. 423 (1987) (applying the Clause to a state guideline sentencing scheme). Each guideline now includes a historical note which facilitates determining whether the guideline is subject to Ex Post Facto objection.

Validity. In keeping with express statutory language and with general principles of delegation, the guidelines and policy statements must be consistent with every pertinent provision of titles 18 and 28 of the United States Code. 28 U.S.C. § 994(a). They must also, of course, conform to the requirements of the Constitution. (In *Mistretta v. United States*, 488 U.S. 361 (1989), the Supreme Court upheld the Act only against the challenges raised, excessive delegation and separation of powers.) Counsel must scrutinize all unfavorable guidelines provisions for both statutory and constitutional validity, with special attention to recent amendments.

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WORKSHEET A (OFFENSE LEVEL)

COMPLETE A SEPARATE WORKSHEET A for each count of conviction or stipulated offense before applying the multiple count rules in §3D1.3. Exceptions: Only a single Worksheet A is to be completed: (1) where the offense level for a group of closely related counts is based primarily on aggregate value or quantity (see §3D1.2(d)); (2) where there is a conspiracy, solicitation, or attempt and a substantive count that was the sole object of the conspiracy, solicitation, or attempt (see §3D1.2(b)).

Defendant _____ **District/Office** _____

Docket Number (Year-Sequence-Defendant No.) __ __ - __ __ __ __ __ - __ __ __

Count Number(s)_____ **U.S. Code Title & Section** __ __ - __ - __ __ __ __ - __ __ __

__ __ - __ - __ __ __ __ - __ __ __

1. **Offense Level** (See Chapter Two)

Enter the sum of the base offense level and any specific offense characteristics from Chapter Two. Explain the basis for this determination and cite each applicable guideline section below:

Guideline Number	Description	Level
_____	_____	_____ (base)
_____	_____	_____
_____	_____	_____
_____	_____	_____

Notes: _____

_____

Sum [ ]

2. **Victim-Related Adjustments** (See Chapter Three, Part A) §§ _____ [ ]
Enter the specific section and adjustment applicable. If more than one section is applicable, list each section and enter the combined adjustment. If no adjustment is applicable, enter "0".

3. **Role in the Offense Adjustment** (See Chapter Three, Part B) §§_____ [ ]
Enter the specific section and adjustment applicable. If more than one section is applicable, list each section and enter the combined adjustment. If the adjustment reduces the offense level, enter a minus (-) sign in front of the adjustment. If no adjustment is applicable, enter "0".

4. **Obstruction Adjustment** (See Chapter Three, Part C) [ ]
If applicable, enter "2". If not applicable, enter "0".

5. **Adjusted Offense Level** [ ]
Enter the sum of lines 1-4. If this worksheet does not cover all counts of conviction or stipulated offenses, complete Worksheet B. Otherwise, enter this result on Worksheet D, Line 1.

---

* **If the defendant** is convicted of a single count, check the box. Note also that Worksheet B need not be completed. [ ]

* **If the defendant** has no criminal history, enter criminal history category "I" here and on line 4, Worksheet D. Note also that Worksheet C need not be completed. [ ]

WORKSHEET B (MULTIPLE COUNTS OR STIPULATION TO ADDITIONAL OFFENSES)

Defendant_____ **Docket Number** _____

Notes explaining grouping decision:_____

_____

_____

Instructions for Items 1-5.

If the offense level for the Group is based primarily on aggregate value or quantity, or is the offense level for a count charging conspiracy and a substantive offense that was the sole object of the conspiracy, enter the adjusted offense level from Worksheet A. Otherwise, enter the adjusted offense level from Worksheet A for the count in the Group having the highest adjusted offense level (See §3D1.3). List the count number(s) for each of the counts in the Group.

In determining the number of units to be assigned, count:

- **One unit** (1) for the Count Group with the highest offense level;
- **One unit** (1) for each additional Group equally serious or 1 to 4 levels less serious;
- **One-half unit** (1/2) for each group 5 to 8 levels less serious;
- **No increase** in units for each group 9 or more levels less serious.

1. **Adjusted Offense Level for the First Group of Closely Related Counts**

   Count number(s): _____ _____ (unit)

2. **Adjusted Offense Level for the Second Group of Closely Related Counts**

   Count number(s): _____ _____ (unit)

3. **Adjusted Offense Level for the Third Group of Closely Related Counts**

   Count number(s): _____ _____ (unit)

4. **Adjusted Offense Level for the Fourth Group of Closely Related Counts**

   Count number(s): _____ _____ (unit)

5. **Adjusted Offense Level for the Fifth Group of Closely Related Counts**

   Count number(s): _____ _____ (unit)

6. **Total Units** _____ **(Total Units)**

7. **Increase in Offense Level Based on Total Units** (see §3D1.4)

1 unit - no increase	3 units - add 3 levels
1 1/2 units - add 1 level	4 or 5 units - add 4 levels
2 units - add 2 levels	More than 5 - add 5 levels

[except when the total number of units is 1 1/2, round up to the largest whole number]

8. **Highest of the Adjusted Offense Levels From Lines 1-5 Above.**

9. **Combined Adjusted Offense Level** (see §3D1.4)
   Enter the sum of Lines 7 and 8 here and on Worksheet D, Line 1.

WORKSHEET C (CRIMINAL HISTORY)

Defendant _____ **Docket Number** _____

Date Defendant Commenced Participation in Instant Offense _____

1. 3 POINTS for each prior **ADULT** sentence of imprisonment exceeding ONE YEAR and ONE MONTH imposed within 15 YEARS of the defendant's commencement of the instant offense OR resulting in incarceration during any part of that 15-YEAR period. (See §§4A1.1(a) and 4A1.2)

2. 2 POINTS for each prior sentence of imprisonment of at least 60 DAYS resulting from an offense committed **SUBSEQUENT** to the defendant's 18th birthday not counted under §4A1.1(a) imposed within 10 YEARS of the instant offense; and

   2 POINTS for each prior sentence of imprisonment of at least 60 DAYS resulting from an offense committed **PRIOR** to the defendant's 18th birthday not counted under §4A1.1(a) from which the defendant was released from confinement within 5 YEARS of the instant offense. (See §§4A1.1(b) and 4A1.2)

3. 1 POINT for each prior sentence resulting from an offense committed **SUBSEQUENT** to the defendant's 18th birthday not included under §4A1.1(a) or §4A1.1(b) imposed within 10 YEARS of the instant offense; and

   1 POINT for each prior sentence resulting from an offense committed **PRIOR** to the defendant's 18th birthday not included under §4A1.1(a) or §4A1.1(b) imposed within 5 YEARS of the instant offense. (See §§4A1.1(c) and 4A1.2)

   NOTE: a maximum of **4 POINTS** may be imposed for the items in 3.

Date of Imposition	Sentence Status*	Offense	Sentence	Release Date **	Criminal History Pts.

* Sentence status, juvenile (J) or adult (A), required on sentences if offense committed prior to age 18.

** A release date is required in only three instances:

1. When a sentence covered under §4A1.1(a) was imposed more than 15 years prior to the commencement of the instant offense but release from incarceration occurred within such 15-year period;

2. When a sentence counted under §4A1.1(b) was imposed for an offense committed prior to age 18 and more than 5 years prior to the commencement of the instant offense, but release from incarceration occurred within such 5-year period; and

3. When §4A1.1(e) applies because the defendant was released from custody within 2 years of the instant offense or was still in custody at the time of the instant offense.

Total Criminal History Points for §§4A1.1(a), 4A1.1(b), and 4A1.1(c) (Items 1, 2, 3) [ ]

Rev. 6/1/89

4. **2 POINTS** if the defendant committed the instant offense while under any criminal justice sentence (e.g., probation, parole, supervised release, imprisonment, work release, escape status). (See §§4A1.1(d) and 4A1.2.) List the type of control and identify the sentence from which control resulted. Otherwise, enter **0 POINTS**.

_____

5. **2 POINTS** if the defendant committed the instant offense less than 2 YEARS after release from imprisonment on a sentence counted under §4A1.1.(a) or (b). However, enter only **1 POINT** for this item if 2 points were added under §4A1.1(d). (See §§4A1.1(e) and 4A1.2.) List the date of release and identify the sentence from which release resulted. Otherwise, enter **0 POINTS**.

_____

6. **Total Criminal History Points** (Sum of Items 1-5)

7. **Criminal History Category** (Enter here and on Worksheet D, Line 4)

Total Points	Criminal History Category
0 - 1	I
2 - 3	II
4 - 6	III
7 - 9	IV
10 - 12	V
13 or more	VI

WORKSHEET D (GUIDELINE WORKSHEET)

Defendant _____ **District** _____

Docket Number _____

1. **Adjusted Offense Level** (From Worksheet A or B)

   If Worksheet B is required, enter the result from Worksheet B, Line 9. Otherwise, enter the result from Worksheet A, Line 5.

2. **Acceptance of Responsibility** (See Chapter Three, Part E)

   If applicable, enter "2". Otherwise, enter "0".

3. **Offense Level Total** (Line 1 less Line 2)

4. **Criminal History Category** (From Worksheet C)

   Enter the result from Worksheet C, Line 7.

5. **Career Offender/Criminal Livelihood** (See Chapter Four, Part B)

   a. Offense Level Total

   If the career offender provision (§4B1.1) or the criminal livelihood provision (§4B1.3) results in a higher offense level total than Line 3, enter the offense level total. Otherwise, enter "N/A".

   b. Criminal History Category

   If the career offender provision (§4B1.1) applies, enter "VI" for the criminal history category. Otherwise, enter "N/A".

6. **Guideline Range from Sentencing Table**

   Enter the applicable guideline range from Chapter Five, Part A. months

7. **Probation**

   a. **Imposition of a Sentence of Probation** (Check the line applicable)

   ____1. Probation is not authorized by the guidelines (if the minimum of the guideline range is greater than six months). (If checked, go to item 8.)

   ____2. Probation is authorized by the guidelines (if the minimum of the guideline range is zero months) (§5B1.1(a)(1)).

   ____3. Probation is authorized by the guidelines (if the minimum of the guideline range is at least one but not more than six months), provided the court imposes a condition or combination of conditions specified under §5B1.1(a)(2).

   A. **Length of a Term of Probation** (See §5B1.2).

   If probation is authorized, the guideline for the length of such term of probation is:
   (Check the line applicable)

   ____1. At least one year, but not more than five years (if the offense level total is 6 or more)

   ____2. No more than three years (if the offense level total is 5 or less)

B. **Conditions of Probation** (See §5B1.3)

In addition to statutorily required conditions and the recommended standard conditions (See §5B1.4(a)), list any applicable special conditions from §5B1.4(b).

_____

8. **Sentences under §5C2.1(c)(3) and (d)(2)** (Check the line applicable)

___1. The provisions of §5C2.1(c)(3) and (d)(2) are not applicable (if the minimum of the guideline range is zero or is greater than 10 months.) (If checked, go to item 9.)

___2. A sentence under §5C2.1(c)(3) or (d)(2) is authorized by the guidelines (if the minimum of the guideline range is at least one month but no greater than 10 months.)

9. **Supervised Release**

a. **Imposition and Length of a Term of Supervised Release** (See §§5D3.1, 5D3.2)

- If a term of imprisonment of more than one year is imposed, the guidelines require a term of supervised release.
- If a term of imprisonment of one year or less is imposed, the guidelines authorize but do not require a term of supervised release.

List the guideline and the length of any term of supervised release:

_____

b. **Conditions of Supervised Release** (See §5D3.3)
In addition to statutorily required conditions and the recommended standard conditions (See §5B1.4(a)), list any applicable special conditions from §5B1.4(b).

_____

10. **Restitution** (See §5E4.1)

If an order of restitution is applicable, enter the amount. Otherwise, enter "N/A".

_____

11. **Fines**

a. **Fines for Individual Defendants** (See §5E4.2)

		Minimum		Maximum
(1)	Total from Counts for Statutes Carrying Special Fine Provisions			$_____
(2)	Fine Table:	$_____		$_____
(3)	Personal Gain to Defendant Less Restitution:	$_____		
(4)	Gross Loss Caused by Offense(s)		($_____ x 2)	$_____
	Gross Gain to All Participants		($_____ x 3)	$_____

Range for Fines:
(determined by the greater minimum and greatest maximum above) . **Minimum:** $ _____ **Maximum:** $ _____

b. **Cost of imprisonment** $ _____ **Cost of probation, supervised release** $ _____
(See §5E4.2(i))

Cost of community confinement $ _____

Defendant _____

12. **Special Assessments**. (See §5E4.3)

Enter the amount of any special assessment required for each count of conviction.

_____

13. **Additional Applicable Guidelines, Policy Statements, Statutory Provisions, and Aggravating and Mitigating Factors**

List any additional applicable guidelines, policy statements, and statutory provisions. Also list any applicable aggravating and mitigating factors that may warrant a sentence at a particular point within the applicable guideline range or outside the applicable guideline range. Attach additional sheets as required.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Completed by _____ Date _____

[If a plea agreement is accepted by the Court, attach a copy to the worksheet.]

SENTENCING TABLE

(In months of imprisonment)

Offense Level	Criminal History Category (Criminal History Points)					
	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11,12)	VI (13 or more)
1	0 - 6	0 - 6	0 - 6	0 - 6	0 - 6	0 - 6
2	0 - 6	0 - 6	0 - 6	0 - 6	0 - 6	1 - 7
3	0 - 6	0 - 6	0 - 6	0 - 6	2 - 8	3 - 9
4	0 - 6	0 - 6	0 - 6	2 - 8	4 - 10	6 - 12
5	0 - 6	0 - 6	1 - 7	4 - 10	6 - 12	9 - 15
6	0 - 6	1 - 7	2 - 8	6 - 12	9 - 15	12 - 18
7	1 - 7	2 - 8	4 - 10	8 - 14	12 - 18	15 - 21
8	2 - 8	4 - 10	6 - 12	10 - 16	15 - 21	18 - 24
9	4 - 10	6 - 12	8 - 14	12 - 18	18 - 24	21 - 27
10	6 - 12	8 - 14	10 - 16	15 - 21	21 - 27	24 - 30
11	8 - 14	10 - 16	12 - 18	18 - 24	24 - 30	27 - 33
12	10 - 16	12 - 18	15 - 21	21 - 27	27 - 33	30 - 37
13	12 - 18	15 - 21	18 - 24	24 - 30	30 - 37	33 - 41
14	15 - 21	18 - 24	21 - 27	27 - 33	33 - 41	37 - 46
15	18 - 24	21 - 27	24 - 30	30 - 37	37 - 46	41 - 51
16	21 - 27	24 - 30	27 - 33	33 - 41	41 - 51	46 - 57
17	24 - 30	27 - 33	30 - 37	37 - 46	46 - 57	51 - 63
18	27 - 33	30 - 37	33 - 41	41 - 51	51 - 63	57 - 71
19	30 - 37	33 - 41	37 - 46	46 - 57	57 - 71	63 - 78
20	33 - 41	37 - 46	41 - 51	51 - 63	63 - 78	70 - 87
21	37 - 46	41 - 51	46 - 57	57 - 71	70 - 87	77 - 96
22	41 - 51	46 - 57	51 - 63	63 - 78	77 - 96	84 - 105
23	46 - 57	51 - 63	57 - 71	70 - 87	84 - 105	92 - 115
24	51 - 63	57 - 71	63 - 78	77 - 96	92 - 115	100 - 125
25	57 - 71	63 - 78	70 - 87	84 - 105	100 - 125	110 - 137
26	63 - 78	70 - 87	78 - 97	92 - 115	110 - 137	120 - 150
27	70 - 87	78 - 97	87 - 108	100 - 125	120 - 150	130 - 162
28	78 - 97	87 - 108	97 - 121	110 - 137	130 - 162	140 - 175
29	87 - 108	97 - 121	108 - 135	121 - 151	140 - 175	151 - 188
30	97 - 121	108 - 135	121 - 151	135 - 168	151 - 188	168 - 210
31	108 - 135	121 - 151	135 - 168	151 - 188	168 - 210	188 - 235
32	121 - 151	135 - 168	151 - 188	168 - 210	188 - 235	210 - 262
33	135 - 168	151 - 188	168 - 210	188 - 235	210 - 262	235 - 293
34	151 - 188	168 - 210	188 - 235	210 - 262	235 - 293	262 - 327
35	168 - 210	188 - 235	210 - 262	235 - 293	262 - 327	292 - 365
36	188 - 235	210 - 262	235 - 293	262 - 327	292 - 365	324 - 405
37	210 - 262	235 - 293	262 - 327	292 - 365	324 - 405	360 - life
38	235 - 293	262 - 327	292 - 365	324 - 405	360 - life	360 - life
39	262 - 327	292 - 365	324 - 405	360 - life	360 - life	360 - life
40	292 - 365	324 - 405	360 - life	360 - life	360 - life	360 - life
41	324 - 405	360 - life	360 - life	360 - life	360 - life	360 - life
42	360 - life	360 - life	360 - life	360 - life	360 - life	360 - life
43	life	life	life	life	life	life